

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
A. J. CORVIN II,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 98

REPORT ON INFORMAL CONFERENCE,
FORMAL HEARING, AND PROPOSED
FINDINGS OF FACT, CONCLUSIONS AND ORDER

This matter is the appeal of civil penalties totaling \$500 involked
by respondent Agency for two alleged open burning violations of
respondent Agency's Regulation I, Section 9.02, involving a fire at
appellant's property at 1001 - 151st Street East, Spanaway, Pierce
County, on January 11 and 12, 1972.

The matter came before the Pollution Control Hearings Board (Walt
Woodward, hearing officer) at a proceeding in the County-City Building,
Tacoma, at 9:30 a.m., April 13, 1972. Appellant was present and
represented himself. Respondent was represented by its counsel, Keith

1 D. McGoffin. Eugene Barker, Olympia court reporter, prepared the
2 transcript.

3 The proceeding began as an informal conference. Appellant offered
4 to concede the violations in exchange for a penalty reduced to \$25, but
5 this offer was refused by respondent Agency. The hearing officer
6 declared the informal conference had failed to achieve a compromise
7 settlement and directed that the proceeding assume the status of a
8 formal hearing.

9 Witnesses were sworn and testified. An exhibit was offered and
10 admitted.

11 On the basis of the transcribed record of the hearing and the
12 exhibit admitted, the Pollution Control Hearings Board makes these

13 PROPOSED FINDINGS OF FACT

14 I.

15 In the morning of January 11, 1972, on his property in Spanaway,
16 appellant ignited with newspapers, scrap lumber and stove oil, a pile
17 of wet logs and debris about thirty feet in diameter and several feet
18 high. At the time of ignition of the fire, appellant possessed both a
19 permit for burning natural vegetation issued by respondent Agency
20 (Respondent's Exhibit No. 1), and a burning permit from the Spanaway
21 Fire Department. The respondent Agency's permit was a renewal of an
22 older permit; it was not based on a specific inspection of the site of
23 the fire in this matter.

24 II.

25 At about 4:00 p.m., January 11, 1972, the burning site was

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1 inspected by an inspector of respondent Agency and an official of the
2 Spanaway Fire Department. Appellant was not present. The officials
3 decided that smoke and sparks being carried over nearby residences by a
4 strong wind, were both an air pollution and fire hazard; they agreed the
5 fire should be extinguished by the Spanaway Fire Department. This was
6 done.

7 III.

8 About midday on January 12, 1972, appellant was informed in a
9 telephone conversation with an official of respondent Agency, that his
10 permit for burning natural vegetation had been revoked and that
11 written notification of this revocation and a notice of violation would
12 be mailed to him.

13 IV.

14 The fire on January 11, 1972 apparently rekindled itself and burned
15 again during the day hours of January 12, 1972, emitting more smoke and
16 sparks. Appellant made no effort to extinguish it.

17 From these proposed findings, the Pollution Control Hearings Board
18 comes to these

19 PROPOSED CONCLUSIONS

20 I.

21 On January 11, 1972, appellant violated Section 9.02 of Regulation
22 I of respondent Agency by using scrap lumber, by burning tires, by
23 permitting excessive smoke emission and by permitting particulant
24 matter to fall on the real property of others, all contrary to conditions
25 printed on the face of the natural vegetation permit which he had

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1 obtained from respondent Agency.

2 II.

3 It is not clear whether appellant knew that old tires were included
4 in the pile of debris which was burned.

5 III.

6 The violation was the first such of record against appellant, a
7 general contractor doing business in Pierce County for several years.
8 In view of this, the maximum allowable penalty of \$250 appears to be
9 excessive.

10 IV.

11 On January 12, 1972, appellant again violated Section 9.02 of
12 Regulation I of respondent Agency by making no effort to extinguish the
13 rekindled fire after having been notified by an official of respondent
14 Agency that his permit for burning natural vegetation had been revoked
15 and no longer was in effect. In this connection, it is noted that his
16 permit includes a printed notice stating that the permit "may be
17 revoked for failure to comply."

18 V.

19 In view of the circumstances, the maximum allowable penalty of
20 \$250 imposed for the violation on January 12, 1972 appears to be
21 reasonable.

22 Based on these proposed findings and conclusions, the Pollution
23 Control Hearings Board makes the following

24 PROPOSED ORDER

25 The penalty for the violation on January 12, 1972 (Notice of
26 REPORT OF INFORMAL CONFERENCE,
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1 Civil Penalty No. 215) is affirmed. The penalty for the violation on
2 January 11, 1972 in the sum of \$250 (Notice of Civil Penalty No. 214) is
3 set aside as excessive and remanded to the Puget Sound Air Pollution
4 Control Agency for the assessment of a more appropriate amount.

5 DONE at Olympia, Washington this 2nd day of May, 1972.

6 POLLUTION CONTROL HEARINGS BOARD

7 *Matthew W. Hill*
8 MATTHEW W. HILL, Chairman

9 *James T. Sheehy*
10 JAMES T. SHEEHY, Member

11 *Walt Woodward*
12 WALT WOODWARD, Member

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